IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10621 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANATKUMAR MOHANLAL LAKHANI - Petitioner(s)

Versus

INDIAN FARMERS FERTILISERS CO-OPERATIVE LTD. - Respondent(s)

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Appearance :

MR RV DESAI for Petitioner(s) : 1,
NANAVATI ASSOCIATES for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 12/01/2006

CAV JUDGMENT

1.By filing this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the judgment and award dated 30.10.1991 and 19.6.1999

passed by the Presiding Officer, Labour court, Kalol in Reference (LCA) No. 89 of 1984 (Old Number) – Reference (LCK) No. 1 of 1984 (New Number), by which the Labour Court has held that the departmental inquiry conducted against the petitioner – workman is just and proper and since the petitioner – workman has failed to prove his case in a reference, the reference was rejected.

2. It is the case of the petitioner that the petitioner was employed in the respondent – undertaking as a Chemist in the year 1973 and was posted at Kalol. It is the case of the petitioner that in 1980-81, the petitioner developed certain skin diseases and was advised by the Doctors to refrain from handling chemicals in the Chemical Department. It is the case of the petitioner that the petitioner applied for leave which was initially granted by the respondent. However, despite taking the medical treatment for a long period, the physical condition of the petitioner did not improve and, therefore, he applied for transfer to some other department. However, the respondent – company did not sanction his request for transfer nor allowed more leave and because of his illness, the petitioner had to remain absent from duty.

3. It appears from the record that the petitioner was served with the chargesheet dated 7.8.1981 by the

Manager (Production) of the respondent – company, wherein the following charges were levelled against the petitioner – workman :

> "1. You are remaining absent from your duties without prior permission or authorization since March 1, 1980 and, therefore, your absence from duty with effect from that date amounts to an unauthorized absence.
>
> 2. From time to time you have been applying for leave and the same has not been sanctioned and in fact you have been advised to join your duties forthwith.
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> 3.Remaining absent without prior permission or authorization from the Management amount to act of misconduct under clauses 24(f) and 24(1) of the Model Standing Orders prescribed by the Government of Gujarat for Workmen doing Industrial and Technical work are applicable to you."

4.The petitioner was also called upon to show cause as to why the disciplinary action should not be taken against him as per the Model Standing Orders mentioned in the charge sheet. It appears that the petitioner gave reply to the said chargesheet vide his reply dated 18.8.1981 and denied the allegations / charges mentioned in the chargesheet. Ultimately, the respondent – company

appointed one Shri Manubhai D. Shah as Inquiry Officer and one Shri G.H.Joshi as Presenting Officer. The inquiry was conducted against the petitioner. The petitioner was also supplied the copies of necessary documents as demanded by the petitioner. It appears that on conclusion of the inquiry, the petitioner was served with the notice dated 6.11.1982. By the said notice, the petitioner was called upon to show cause why the punishment of discharge from service under the Model Standing Order No.25 should not be imposed upon the petitioner. The petitioner gave reply vide his reply dated 26.11.1982. Ultimately, by order dated 21.2.1983, the services of the petitioner came to be terminated with effect from 22.2.1983.

5. Being aggrieved and dissatisfied by the order of termination of service, the petitioner raised the industrial dispute which was numbered as Reference (LCK) No. 1/84 before the Labour Court at Kalol. The respondent – company filed the reply before the Labour Court and requested the Labour Court that the legality of the inquiry must be determined first and in view of this demand, the Labour Court first proceeded to examine the question of legality of the inquiry held and conducted against the petitioner.

6. The Labour Court, by its judgment and award dated

30.10.1991 held that the departmental inquiry conducted against the petitioner – workman is just and proper. Ultimately, the Labour Court proceeded to examine the case on merits and after appreciating evidence on record, by its judgment and award dated 19.6.1999 dismissed the reference made by the petitioner – workman.

7. Being aggrieved and dissatisfied by both the orders dated 30.10.1991 and 19.6.1999 passed by the Presiding Officer, Labour Court in Reference (LCK) No.1/84, the petitioner – workman has preferred the present petition under Article 226/227 of the Constitution of India for quashing and setting aside the same.

8. Heard the learned advocates for the parties at length.

9. It is required to be noted that the first order of the Labour Court is dated 30.10.1991, whereby the Labour Court has held that the inquiry conducted by the respondent against the present petitioner is legal and valid. The said order of the Labour Court dated 30.10.1991 has not been challenged by the petitioner upto 1999 and that the Part-I award has been challenged after a period of 8 years and admittedly there is a delay of 8 years in challenging the said order dated 30.10.1991 passed by the Labour Court. Even the said delay has not been explained by the petitioner –

workman. It can also be seen from the record that the petitioner remained absent on duty without prior permission or sanction of the leave and since the petitioner kept on applying for leave from time to time, the same was not sanctioned and the petitioner was requested to join the duty forthwith. Ultimately, the petitioner was issued the chargesheet for committing the misconduct under Clause – 24(f) and 24(l) of the Model Standing Orders and that till the issuance of the chargesheet, the petitioner did not report for duty. It can also be seen from the record that the petitioner was afforded full opportunity of hearing and to defend the case and the charges levelled against the petitioner was proved before the Inquiry Officer and the petitioner was found guilty of committing misconduct. The said fact has also been proved before the Labour Court. After the report of the Inquiry Officer, the petitioner was served with the show cause notice dated 6.11.1982 and was called upon to show cause as to why the petitioner should not be discharged from service under the Model Standing Order No. 24. After considering the reply filed by the petitioner, the services of the petitioner were terminated with effect from 22.2.1983 vide order dated 21.04.1983 and the petitioner was also paid one month

wages as well as compensation equivalent to the retrenchment compensation and in addition thereof, the petitioner was also paid one month wages under Clause 33(2)(b) of the Industrial Disputes Act.

10.It is an admitted fact that the petitioner – workman remained absent from 1.3.1980 till 7.8.1981 i..e, for more than one year and hence period of absence was more than 55 days and, therefore, it cannot be said that the respondent did not grant leave to the petitioner even though long period of leave was at his credit which aggregated to about 55 days. It may also be noted that the fact that the petitioner was not suffering from any skin disease at the time of examination is evident from the certificate dated 6.10.1980 (Annexure `C'). It can also be seen that the Doctor, who has given the medical report of the petitioner on 23.2.1980 upon which the petitioner has placed reliance, was never examined before the Labour Court and further that the Medical Board who has given the opinion against the petitioner (Annexure `C') is a matter of record and, therefore, considering this aspect, I am of the considered opinion that the case of the petitioner stands unproved. At this stage, reference is required to be made to Clause 24(f) of the Standing Orders which reads as under :

“24(f) : Habitual absence without leave or absence

without leave for more than ten consecutive days or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanation.”

11.Upon perusal of the Clause 24(f), it is crystal clear that it covers absence without leave for more than 10 consecutive days or overstaying the sanction leave without sufficient ground or proper satisfactory explanation. Admittedly, in the present case, the petitioner has remained absent for more than 10 consecutive days and in the facts of the present case, I am of the opinion that the misconduct committed by the petitioner falls within the Clause 24 of the Model Standing Orders. In this view of the matter, the respondent was justified in taking disciplinary action against the petitioner.

12.Further, considering the facts of the present case, it cannot be said that the authority issuing the chargesheet was completely bias and prejudice against the petitioner. It can also be noticed from the record that allegation of victimization has also not been proved before the Labour Court and the allegation of victimization made by the petitioner cannot be accepted for the simple reason that the other employees having a similar situation as the petitioner have not been terminated. Therefore, it can be seen that the

termination of the petitioner is solely on the basis of the absence for a period of more than one year. The Labour Court has specifically come to the conclusion that as per the report of the Medical Board, the petitioner – workman was not suffering from any skin disease but was having skin infection on the chest and the same was not because of the service in the present department and he is fit for the work. The Labour Court has also specifically come to the conclusion that the reasonings given by the Inquiry Officer are in consonance with the inquiry proceedings which does not require any interference.

13. It is also required to be noted that this is a petition filed under Article 227 of the Constitution of India. Once the Labour Court appreciated the evidence and has come to the conclusion that the action of the respondent – company is legal and valid, this Court cannot reappreciate the evidence in a petition filed under Article 227 of the Constitution of India. In this view of the matter, no interference of this Court is called for. Under the circumstances, this petition is required to be dismissed. Accordingly, this petition is dismissed. Rule discharged. No costs.

(SHARAD D DAVE, J)

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